



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

July 16, 1996

Mr. John C. Hardy  
Hardy & Atherton  
One American Center, Suite 750  
909 ESE Loop 323  
Tyler, Texas 75701

OR96-1144

Dear Mr. Hardy:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request ID# 40220.

The Alba-Golden Independent School District (the "district"), which you represent, received a request for financial records and information relating to a construction project and an architect's work on the project. You state that the district will provide the requestor with some of the requested information, but contend that the district does not have information that is responsive to certain portions of the request. You ask for a decision regarding the duty of the district to respond to a request when the district has no information that is responsive to the request.

A governmental body is not required to create or obtain new information in response to an open records request. *A & T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex. 1995). A governmental body must, however, make a good faith effort to relate a request for information to information that the governmental body holds. Open Records Decision No. 561 (1990) at 8-9. Additionally, when a request for information is unclear or broad, a governmental body should advise the requestor of the types of information available so that the requestor may narrow the request. *Id.*

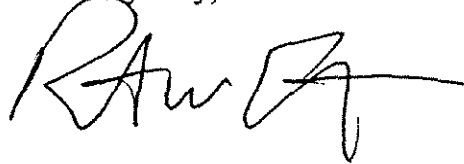
We note that the requestor in this case has advised this office that the requested documents "exist and are on file at [the architect's] office." Section 552.002 of the Government Code defines public information as "information that is collected,

assembled, or maintained under a law or ordinance or in connection with the transaction of official business: (1) by a governmental body; or (2) *for a governmental body and the governmental body owns the information or has a right of access to it.*" [Emphasis added.] Information that is collected, assembled, or maintained by a third party may be subject to disclosure under chapter 552 of the Government Code if a governmental body owns or has a right of access to the information. E.g., Open Records Decision No. 462 (1987). Additionally, a governmental body may not contract away its right of access to information held by a third party if the information is necessary to exercise a discretionary function. Open Records Decision No. 585 (1991).

This office is unable to resolve questions of fact through the opinion process. Open Records Decision Nos. 554 (1990), 552 (1990). Based on the information provided to this office, the situation at hand raises disputed questions of fact. Thus, we are unable to *determine whether responsive documents exist and whether the documents are public information to which the district has a right of access.*

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "RWS", with a long horizontal flourish extending to the right.

Robert W. Schmidt  
Assistant Attorney General  
Open Records Division

RWS/rho

Ref.: ID# 40220

cc: Mr. Jim Giametta  
Executive Editor  
T.B. Butler Publishing Co., Inc.  
P.O. Box 2030  
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